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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200707-0182]

RIN 0648-BI28

**Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States;
Northeast Multispecies Fishery; Removal of Regulations Implementing the Closed
Area I Hook Gear Haddock Special Access Program**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This action removes regulations that implement the Closed Area I Hook
Gear Haddock Special Access Program. The Omnibus Essential Fish Habitat
Amendment 2 eliminated the year-round Closed Area I, rendering the Closed Area I
Hook Gear Haddock Special Access Program unnecessary. Eliminating the Closed Area
I Hook Gear Haddock Special Access Program will reduce confusion and inconsistency
with other regulations.

DATES: Effective [*insert date of publication in the FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery
Management Specialist, phone: (978) 281-9232; e-mail: Spencer.Talmage@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

In 2004, the New England Fishery Management Council established the Closed Area I Hook Gear Haddock Special Access Program (CAI HGH SAP) to provide vessels with additional opportunities in Closed Area I to target healthy stocks, if they followed certain gear and other restrictions.

The Omnibus Essential Fish Habitat Amendment 2 (83 FR 15240, April 9, 2018) eliminated the year-round closure of Closed Area I. The area once covered by Closed Area I is now open to vessels fishing with hook gear, with the exception of the Georges Bank Dedicated Habitat Research Area and the seasonal Closed Area I North Closure (February 1 – April 15). The CAI HGH SAP does not overlap with either the Georges Bank Dedicated Habitat Research Area or Closed Area I North Closure, and as such, it does not allow any activity otherwise prohibited by these areas. As a result, the CAI HGH SAP is unnecessary, redundant, and inconsistent with the changes made by the Omnibus Essential Fish Habitat Amendment 2 because the program provides special access to an area that is already open to the groundfish fleet in the time that the SAP is effective.

Under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, NMFS is authorized to make changes to regulations that are necessary to carry out any fishery management plan or amendment. This action amends the regulations in § 648.14, § 648.81, § 648.82, and § 648.85 to remove references to the CAI HGH SAP and makes a minor correction to a cross-reference.

This action would not change the allocation to the Incidental Catch Total Allowable Catch (TAC) defined in § 648.85(b)(5)(ii). Such a change would require a substantive change to prior New England Fishery Management Council allocation

decisions, and it is more appropriate for the New England Fishery Management Council to consider these changes in a separate action. Accordingly, on May 29, 2020, we published the proposed rule for Framework Adjustment 59 to the Northeast Multispecies Fishery Management Plan, which would remove the allocation to the Incidental Catch TAC for the CAI HGH SAP (85 FR 32347).

On December 17, 2019, NMFS published a final rule (84 FR 68798) prohibiting vessels from fishing with gillnet gear in the Nantucket Lightship and Closed Area I Closure Areas, in order to comply with a Federal Court order. That rulemaking did not apply to vessels fishing with hook gear, which is the only gear type permitted in the CAI HGH SAP. Therefore, this action to eliminate the CAI HGH SAP is not affected by the prohibition of gillnet fishing in Closed Area I.

Comments and Responses

We received one comment on the proposed rule. No substantive changes from the proposed rule were made as a result of this comment.

Comment 1: One member of the public supported the simplification of regulations, but made the point that in doing so, we should not pose greater harm to fish populations or impact their future health.

Response: We agree. This final rule simplifies and clarifies the regulations by removing a program that is obsolete and no longer functions as originally intended. Removing the regulations implementing the program will not change fishing behavior or distribution, and as a result will not have a negative effect on Northeast Multispecies stocks.

Classification

The National Marine Fisheries Service (NMFS) Assistant Administrator has made a determination that this rule is consistent with section 305(d) and other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period because it would be contrary to the public interest.

Under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, NMFS is authorized to make changes to regulations that are necessary to carry out any fishery management plan or amendment. This action amends the regulations in § 648.14, § 648.81, § 648.82, and § 648.85 to remove references to the CAI HGH SAP and makes a minor correction to a cross-reference.

The CAI HGH SAP regulations are being removed because they are obsolete, redundant, and may introduce confusion to the fishery through unnecessary notification and reporting requirements. Nothing in this action requires industry to take action to comply with the amended regulations, so the 30-day delayed effectiveness period is unnecessary. Additionally, delay of this action would leave unnecessary and confusing regulations and restrictions in place for longer than necessary, which could be detrimental to the fishery.

For the reasons above, the 30-day delayed effectiveness period would undermine management objectives of the FMP and cause unnecessary negative economic impacts to the common pool fishery.

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is an Executive Order 13771 deregulatory action.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Action and which has been approved by the Office of Management and Budget under Control Number 0648-0202.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 8, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14:

- a. Revise paragraphs (k)(6)(ii)(B), (11)(i)(A)(4), (11)(vi), (12)(i)(B), and (12)(ii);

- b. Remove paragraph (k)(12)(vi); and
- c. Redesignate paragraph (k)(12)(vii) as (k)(12) (vi).

The revisions read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(6) * * *

(ii) * * *

(B) *Hook gear.* Fail to comply with the restrictions on fishing and gear specified in §§ 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook gear in areas specified in § 648.80(a), (b), or (c).

* * * * *

(11) * * *

(i) * * *

(A) * * *

(4) If fishing both outside and inside of the areas specified for a SAP under § 648.85(b)(3) and (7), under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to abide by the DAS and possession restrictions under § 648.85(b)(7)(v)(A)(2) through (4).

* * * * *

(vi) *Closure of the U.S./Canada Area for all persons.* If fishing under a NE multispecies DAS or on a sector trip, declare into, enter, or fish in the Eastern

U.S./Canada Area specified in § 648.85(a)(1) if the area is closed under the authority of the Regional Administrator as described in § 648.85(a)(3)(iv)(D) or (E), unless fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3) or the Eastern U.S./Canada Haddock SAP Program specified in § 648.85(b)(7).

(12) * * *

(i) * * *

(B) If a vessel is fishing under a Category B DAS in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), the Regular B DAS Program specified in § 648.85(b)(6), or the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(7), remove any fish caught with any gear, including dumping the contents of a net, except on board the vessel.

(ii) *General restrictions for vessel and operator permit holders.* Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a SAP, as described in §§ 648.85(b)(3)(xi) or 648.85(b)(7)(v)(I).

* * * * *

3. In § 648.81, revise paragraph (a)(5)(ii)(C) to read as follows:

§ 648.81 NE multispecies year-round and seasonal closed areas.

(a) * * *

(5) * * *

(ii) * * *

(C) Fishing in the CA II Yellowtail Flounder/Haddock SAP or the Eastern U.S./Canada Haddock SAP Program as specified in § 648.85(b)(3)(ii) or (b)(7)(ii), respectively.

* * * * *

4. In § 648.82, revise paragraph (e)(3) to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(e) * * *

(3) *Regular B DAS Program 24-hr clock.* For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on 1 calendar day from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can land legally. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in an area subject to differential DAS counting pursuant to paragraph (n)(1)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (n)(1) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(6), and in the Eastern U.S./Canada Area, as

specified in § 648.85(a), DAS counting will begin and end according to the DAS rules specified in § 648.10(e)(5)(iv).

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[§ 648.85 Amended]

5. In § 648.85:
 - a. Remove paragraph (b)(7); and
 - b. Redesignate paragraph (b)(8) as (7).

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